

RECORDING REQUESTED BY:
The Marley Cooling Tower Company
150 N. Sinclair Avenue
Stockton, California 95215-5198

WHEN RECORDED, MAIL TO:
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200
Attention: James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup
Operations Branch



(Space Above This Line For Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Re: San Joaquin Assessor's Parcel Number 143 310 07, Marley Cooling Tower Company

This Covenant and Agreement ("Covenant") is made by and between the Marley Cooling Tower Company (the "Covenantor"), the current owner of property situated in Stockton, County of San Joaquin, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 16.8 acres, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this

reference. The Property is located in the area now generally bounded to the north by Farm Street, to the west by Franklin High School, south by the Stockton Terminal & East Railroad and east by an agricultural trucking facility, City of Stockton, County of San Joaquin, State of California. This property is more specifically described as County Assessor's Parcel No. 143 310 07.

1.02. A limited portion of the Property is more particularly described in Exhibit "B" which is attached and incorporated by this reference ("Capped Property").

1.03. Covenantor is remediating the Property under the supervision and authority of the Department. The Property is being remediated pursuant to a Remedial Action Plan pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, remain in the soil and groundwater in and under portions of the Property, the Remedial Action Plan provided that a deed restriction would be required as part of the site remediation. The Department circulated the Remedial Action Plan for public review and comment. The Remedial Action Plan was approved by the Department on June 29, 1990. Remediation includes installing and maintaining a synthetic membrane cover ("Cap") over the Capped Property. The Cap consists of a low permeability synthetic membrane and other associated layers, as more particularly described in the engineering drawing attached as Exhibit "B" hereto. The response action also includes the installation and operation of: (1) a groundwater extraction and treatment system, (2) a soil flushing system which remediates deep soils below the Capped Property, and (3) groundwater monitoring wells ("Monitoring Wells"). The operation and maintenance of the Cap, groundwater extraction and treatment system, soil flushing system, and groundwater monitoring wells is pursuant to an Operation and Maintenance Manual to be incorporated into a Operation and Maintenance Agreement between Covenantor and the Department.

1.04. As detailed in the Endangerment Assessment contained in Volume IV of the "Marley Cooling Tower Company, Remedial Investigation/Feasibility Study", dated August 11, 1989, prepared by Clements Associates, subsurface soils within 10 feet of the surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following metal contaminants of concern up to the levels set forth below: arsenic at 6,240 parts per million ("ppm") and chromium at 2,410 ppm. Based on a comparison of the foregoing contaminant levels with the following levels published by the US Environmental Protection Agency as being safe for residential use; arsenic at 0.38 ppm and chromium at 210 ppm, the Department concludes that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concludes that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if the soils remain undisturbed and surface use is limited to commercial industrial, park or open space use.



ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.



3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Prohibited Activities-. The following activities shall not be conducted at the property.

- (a) Drilling for drinking water, oil, or gas, without prior written approval by the Department.
- (b) Extraction of groundwater for purposes other than site remediation as approved by the Department.
- (c) Raising of food crops.

4.04. Non-Interference with Cap and Groundwater Capture System. Covenantor agrees:



- (a) Activities that may disturb the Cap and Groundwater and Capture system (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (c) The Cap and Groundwater Capture system shall not be altered without written approval by the Department.
- (d) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap; and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such damage and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Access for Department. The Department and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

4.06. Access for Implementing O&M. The entity or person responsible for implementing the Operation and Maintenance Agreement, shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.



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ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Joaquin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested to:

Marley Cooling Tower Company:
c/o SPX Corporation
Attn: Vice President and General Counsel
700 Terrace Point Drive
Muskegon, Michigan 49433



Department of Toxic Substances Control
Attn: James Tjosvold, Chief
Northern California-Central Cleanup Operations Branch
8800 Cal Center Drive, Suite 350
Sacramento, California 95826-3200

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

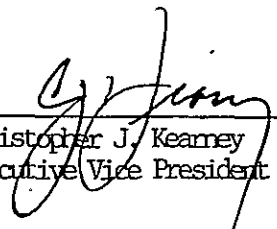
7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

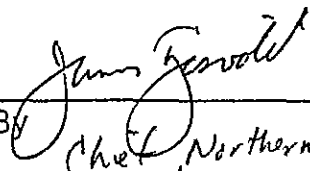
The Marley Cooling Tower Company

January 10, 2002
Date


By Christopher J. Kearney
Executive Vice President

"Department"

March 5, 2002
Date


By Chief, Northern Calif. - Central
Cleanup Operations Branch.



STATE OF NORTH CAROLINA

SS:

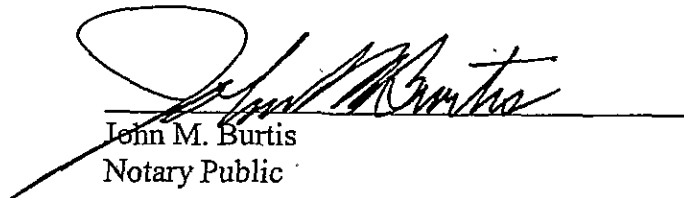
COUNTY OF MECKLENBURG

On January 10, 2002, before me, John M. Burtis, Notary Public, personally appeared Christopher J. Kearney, personally known to me to be the person whose name is subscribed to the written instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal this 10th day of January 2002.

My Commission

Expires: April 2, 2005


John M. Burtis
Notary Public

SEAL



EXHIBIT "A"

DESCRIPTION

MARLEY COMPANY PROPERTY

All that certain real property being described in Book of Official Records, Volume 2983, Page 92, San Joaquin County Records and as depicted upon the survey filed for record in Book 15 of Surveys at Page 182, San Joaquin County Records lying within Section 55 C.M. Weber Grant, "El Rancho Del Campo De Los Franceses", City of Stockton, County of San Joaquin, State of California being more particularly described as follows:

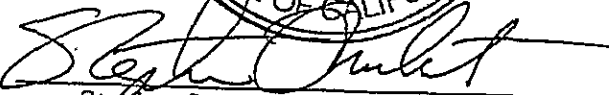
Beginning at the southeasterly corner of the property described in said Book of Official Records, Volume 2983, Page 92; thence along the perimeter of said property the following four (4) courses:

- 1) South 73° 04' 00" West 688.95 feet;
- 2) North 16° 47' 00" West 1,062.40 feet;
- 3) North 73° 16' 00" East 684.50 feet and
- 4) South 17° 01' 25" East 1,060.00 feet to the POINT OF BEGINNING.

Containing 16.73 acres, more or less.

Basis of Bearings: The easterly line of said survey which bears South 17° 01' 25" East.




Stephen R. Thumlert, P.L.S. #4334

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EXHIBIT "B"

DESCRIPTION

MARLEY COMPANY RESTRICTED AREA

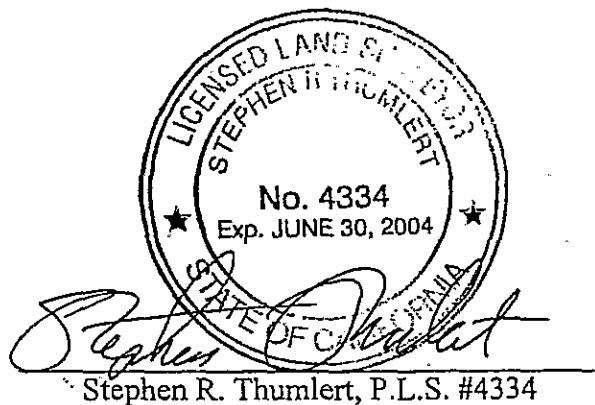
All that certain restricted area lying within the property described in Book of Official Records, Volume 2983, Page 92, San Joaquin County Records and as shown on the map filed for record in Book 15 of Surveys at Page 182, San Joaquin County Records lying within Section 55 C.M. Weber Grant, "El Rancho Del Campo De Los Franceses", City of Stockton, County of San Joaquin, State of California being more particularly described as follows:

Beginning at a point which bears North 31° 45' 00" West 435.56 feet from the southeasterly corner of 16.73 acre parcel; thence along the perimeter of the herein described restricted area the following eleven (11) courses:

- 1) North 17° 01' 25" West 168.33 feet;
- 2) North 72° 58' 35" East 49.00 feet;
- 3) South 17° 01' 25" East 22.50 feet;
- 4) North 72° 58' 35" East 42.17 feet;
- 5) North 27° 58' 35" East 26.50 feet;
- 6) South 17° 01' 25" East 124.95 feet;
- 7) South 72° 58' 35" West 19.32 feet;
- 8) North 17° 32' 26" West 28.14 feet;
- 9) South 72° 27' 34" West 49.78 feet;
- 10) South 17° 01' 25" East 67.30 feet and
- 11) South 72° 58' 35" West 40.56 feet to the POINT OF BEGINNING.

Containing 0.30 acres, more or less.

Basis of Bearings: The easterly line of said survey which bears South 17° 01' 25" East.



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FARM STREET (ABANDONED)
N73°16'00"E 684.50'



SCALE: 1" = 150'

N16°47'00"W
FRANKLIN HIGH SCHOOL
1062.40'

RESTRICTED
AREA
(SEE SHT. 2)

O.R. 2983-92
R.S. 15-182
16.73 ACRES

S170°1'25"E

1060.00'

N31°44'58"W (TIE)
435.56'

P.O.B.

25'

688.95'
S.T.&E. R.R. R/W
& TRACKS

S73°04'00"W



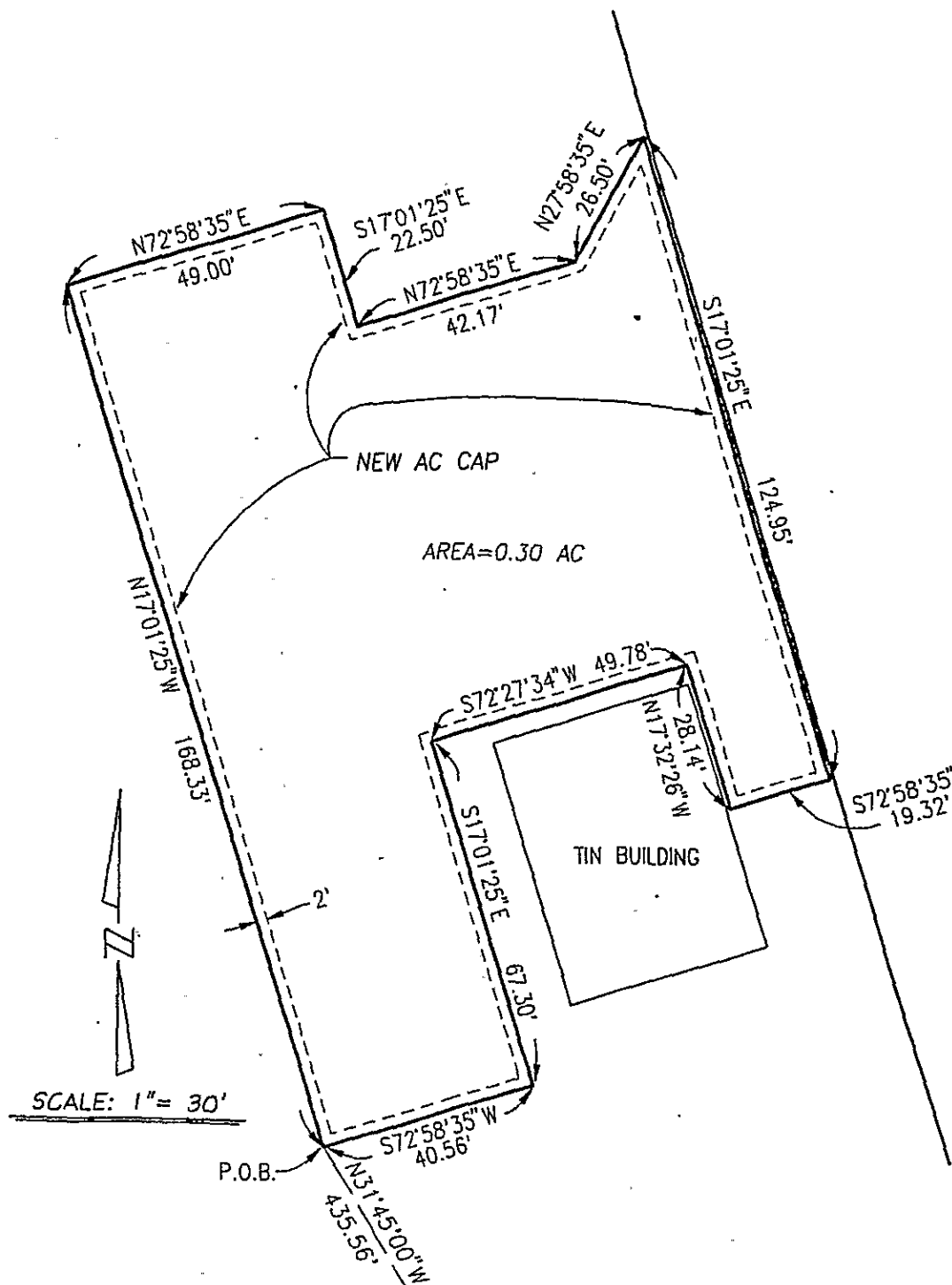
MARLEY COMPANY PROPERTY

- Civil Engineering
- Land Surveying
- Structural Engineering
- Planning



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Date	08/30/00
Job No.	00367
Drawn By	WJS
Checked By	SRT
Scale	1"=150'
File:	000367\civil\exhibit
SHEET NO.	1 OF 2



MARLEY COMPANY RESTRICTED AREA

Date	08/30/00
Job No.	00367
Drawn By	WJS
Checked By	SRT
Scale	1" = 30'
File:	00367\civil\exhibit
SHEET NO.	2 of 2

- Civil Engineering
- Land Surveying
- Structural Engineering
- Planning

AD&S Forensic Survey & Mapping, P.C. 00302



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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sacramento

} ss.

On

March 5, 2002

Date

before me,

Kathleen Duncan

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Jim Luu

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kathleen Duncan
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Deed Restriction

Document Date:

March 5, 2002

Number of Pages: 7+

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

